

REMARKS

Claims 72 – 106 were pending. By means of the present amendment, claims 72 – 79, 82 (the second), 87 – 94 and 103 -106 are cancelled. Claims 80, 83, 85, 95, 98, 99, and 101 have been rewritten as independent claims but are otherwise unchanged. Claims 81, 82 (the first), 84, 86, 96, 97, 100, and 102 remain as previously submitted.

In the official action, all remaining claims were rejected as obvious over U.S Patent No. 6,512,949, issued to Combs, et al. This rejection is respectfully traversed.

Independent claims 72 and 87, from which all remaining claims originally depended were not rejected over Combs '949. As noted in the prior response, these claims require synchronization of the impedance measurements so that they occur at predetermined intervals following cardiac events. As noted in the previous response, modifying Combs '949 to perform in this manner is contradictory to the teaching of the cited patent and would prevent the device disclosed therein from functioning as intended. For this reason, all remaining claims are believed unobvious over Combs '949. Withdrawal of the rejection of the remaining claims over combs '949 is respectfully requested.

In addition, all remaining claims require the use of these impedances, measured at the defined intervals, to determine whether these timed impedance measurements are reliable, by determining whether the leads over which they are measured are functioning properly, by comparing them to previous measurements or by cross checking with a third lead. None of these features is disclosed in Combs '949.

Combs '949 deals with impedance measurements made under different circumstances than those claimed, for a different purpose. It is respectfully asserted that modifying the impedance measurement system of Comb's '949 to meet the timing requirements of the claims and then adding to the functions performed to the

impedance measurements as presently claimed cannot be obvious over Combs '949, absent, given that the purposes of the impedance measurements are different from the outset. Basically, it is asserted that modifying an element of a reference to perform in a new way and then additionally modifying it to perform new functions related to the new way of operation cannot both be obvious absent some teaching relevant to the new way of operation and/or the new functions. Withdrawal of the rejection of the remaining claims over Comb '949 is requested for this reason as well.

It is respectfully requested that any new ground of rejection be in the form of a non-final rejection, as no claims have been amended in a manner that would allow for a second final rejection based upon new references.

Conclusion

All remaining claims are believed unobvious over Combs '949. Contrary to Combs, which teaches measuring fluid content using a mechanism which already measures a related physiologic parameter (respiration), the invention as claimed is directed to using a mechanism previously used as a diagnostic for testing the physical operability of the implanted device itself. This approach, while inconsistent with accomplishing the desired capabilities of Combs '949 nonetheless provides advantages in the form of the ability to check the validity of the measured fluid content, a benefit unavailable in Combs '949 and unappreciated in and unsuggested by the disclosure of Combs '949.

All remaining claims are therefore believed to be allowable over the Combs '949 patent. Reconsideration of the rejections of the remaining claims is respectfully requested.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned attorney to attend to these matters.

'The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

Date: March 30, 2009

/Reed A. Duthler/

Reed A. Duthler

Reg. No. 30,626

Telephone: (763) 526-1564

Customer No. 27581